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In the Matter of:	)	
	)	
ASMA, Inc.,	)	License Number: 13080
t/a Mama Ilardo Pizzeria	)	Case Number: 09-CC-00250
	)	ORDER NUMBER: 2010-002
Holder of a Retailer's Class CR License	)	
at premises	)	
50 Massachusetts Avenue N.E.	)	
Washington, D.C. 20002	)	
	)	

ALSO PRESENT: Michael Stern, Senior Assistant Attorney General  
District of Columbia

Hassan Sedaghatapour, on behalf of the Respondent

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

On July 13, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), dated July 1, 2009, on ASMA, Inc. t/a Mama Ilardo Pizzeria (Respondent), at premises 50 Massachusetts, N.E., Washington, D.C. 20002, charging the Respondent with the following violations:

Charge I: The Respondent sold alcohol to a minor in violation of D.C. Official Code § 25-781(a)(1). The date of this alleged incident was March 26, 2009.

Charge II: The Respondent failed to file with the Board the required quarterly statements reporting for the preceding quarter: gross receipts for the establishment; gross receipts for sales of alcoholic beverages; gross receipts for food sales; total expenses for the purchase of food and alcoholic beverages; and the expenses for purchases of food and alcoholic beverages separately, in violation of D.C. Official Code § 25-113(b)(2)(A). The date of this alleged incident was October 31, 2008.

### **PRELIMINARY MOTION TO DISMISS**

These charges were heard before the Board at a Show Cause Hearing on November 18, 2009. At the beginning of the Hearing, the Government moved to dismiss Charge II due to the Respondent's payment of a fine for the citation that formed the basis for Charge II. The Board takes administrative notice that the Respondent paid the fine for Citation No. 1955 on June 3, 2009 and accordingly the Motion to Dismiss Charge II is summarily **GRANTED**. (*See* Alcoholic Beverage Regulation Administration Show Cause File Number 09-CC-00250).

The matter proceeded to a Show Cause Hearing and both the Government and the Respondent presented evidence through the testimony of witnesses and the submission of documentary evidence. The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

### **FINDINGS OF FACT**

1. The Board issued a Notice of Status Hearing and Show Cause Hearing, dated July 1, 2009. (*See* Alcoholic Beverage Regulation Administration Show Cause File Number 09-CC-00250). The Respondent holds a Retailer's Class DR License and is located at 50 Massachusetts Avenue, N.E., Washington D.C.
2. The Show Cause Hearing in this matter was held on November 18, 2009. The Respondent was charged with two violations. Charge I alleges that the Respondent sold or delivered alcoholic beverages to persons under the age of 21 in violation of D.C. Code § 25-781(a)(1) and Charge II alleges that the Respondent failed to file its Quarterly Report in violation of D.C. Official Code § 25-113(b)(2)(A). (*See* Alcoholic Beverage Regulation Administration Show Cause File Number 09-CC-00250).
3. The Government presented its case through the testimony of one witness, ABRA Supervisory Investigator Jermaine Matthews. *Transcript (Tr.)*, 11/18/09 at 12.

4. Investigator Matthews was working with \_\_\_\_\_ (NCCPUD), monitoring establishments for compliance checks on March 26, 2009, as part of his duties as an ABRA Supervisory Investigator. *Tr.*, 11/18/09 at 14. The compliance checks are conducted from a list of establishments that is compiled at ABRA prior to commencing the evening's monitoring. *Tr.*, 11/18/09 at 14. Part of the compliance check pre-work requires instructing the NCCPUD Under Cover Minors in preparation for the evening's monitoring and ascertaining that they are indeed not the age of majority to legally purchase and consume alcoholic beverages. *Tr.*, 11/18/09 at 14.

5. Investigator Matthews was working with two Under Cover Minors on the night of March 26, 2009; one was 16 and the other was 18 years of age. *Tr.*, 11/18/09 at 15. The Under Cover Minors used their District of Columbia government-issued identifications to establish their birthdates. *Tr.*, 11/18/09 at 15; Government Exhibits 1 and 2. The identification does not state their ages, but it does state that the holder is not 21 years of age until a certain date. *Tr.*, 11/18/09 at 15. Both of the Under Cover Minors were under the age of 21 on the night of March 26, 2009. *Tr.*, 11/18/09 at 15.

6. Investigator Matthews testified that the two Under Cover Minors entered the Respondent's establishment, walked up to the register and asked for alcoholic beverages. *Tr.*, 11/18/09 at 16. Two ABRA investigators accompanied the two Under Cover Minors and Investigator Matthews was positioned in the establishment in such a way that he could hear and see the transaction. *Tr.*, 11/18/09 at 16, 22. The two Under Cover Minors received the alcoholic beverages from the cashier, paid for them and then turned and handed the purchased beers to the two accompanying ABRA investigators. *Tr.*, 11/18/09 at 17. The two Under Cover Minors never showed any identification to the cashier. *Tr.*, 11/18/09 at 17, 22. Investigator Matthews stated that when he prepared the paperwork for the violation, the cashier admitted to him that she never asked the two Under Cover Minors for their identification. *Tr.*, 11/18/09 at 17-21.

7. The Respondent did not call any witnesses to refute the testimony of Investigator Matthews. *Tr.*, 11/18/09 at 24. Mr. Sedaghatpour instead offered a statement to the Board that the cashier did not understand or speak English that well and that she had in fact, requested and checked the identifications of the Under Cover Minors. *Tr.*, 11/18/09 at 11-12, 20. Mr. Sedaghatpour stated that the policy at his establishment is that everybody gets their identification checked. *Tr.*, 11/18/09 at 19. However, he admitted that the cashier made a mistake when she missed the date or perhaps it was because she didn't look closely enough at the identification. *Tr.*, 11/18/09 at 11-12.

8. The Government requested that the Board issue a penalty in the amount of a \$1,500 fine and a five day suspension with one of those days served and four of those days suspended for one year pending no further ABRA violations. *Tr.*, 11/18/09 at 25. The Respondent stated that the Government's proposed penalty was harsh and asked the Board to reduce the fine and as an alternative, increase the number of suspended days. *Tr.*, 11/18/09 at 26-27.

## CONCLUSIONS OF LAW

9. The Board has the authority to suspend or revoke the license of a licensee who violates any provision(s) of Title 25 of the D.C. Official Code pursuant to D.C. Official Code § 25-823(1)(2001). Additionally, pursuant to the specific statutes under which the Respondent was charged, the Board is authorized to levy fines. D.C. Code § 25-830 and 23 D.C.M.R. 800, *et seq.*

10. The Board finds that the Government has proven that the Respondent violated D.C. Code § 25-781(a)(1) by serving alcohol to minors. The Board credits the testimony of ABRA Investigator Jermaine Matthews who observed the Respondent's cashier sell two beers to the Under Cover Minors without requesting to see their identification or ascertaining that they were of legal age. Additionally, the Board relies on Investigator Matthews' testimony that the cashier stated to him that she did not request to see the Under Cover Minors' identification. Though the Respondent disagreed with Investigator Mathew's testimony regarding whether the cashier checked the identification, the Respondent did admit that the cashier made a mistake by not ascertaining the Under Cover Minor's true ages.

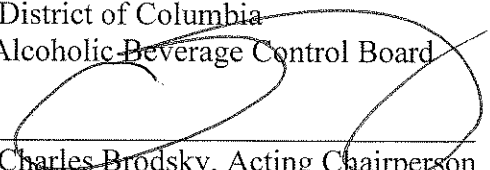
11. Based upon the above, the Board finds that the Respondent's violation of D.C. Official Code § 25-781(a)(1) as set forth in Charge I warrants the suspension of the Respondent's Retailer's Class DR License for a total of five (5) days; one (1) day to be served on January 15, 2010, and four (4) days are to be stayed for a one-year period absent further violations and a fifteen hundred dollar (\$1,500) fine payable within 30 (thirty) days of receipt of this Order. The Board dismisses Charge II.

## ORDER

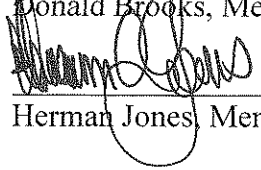
Based on the foregoing findings of fact and conclusions of law, the Board, on this 6th day of January, 2010, finds that the Respondent, ASMA, Inc., t/a Mama Ilardo Pizzeria, Holder of a Retailer's Class DR License, violated D.C. Code § 25-781(a)(1). The Board hereby **ORDERS** that:

1. Charge I: Respondent shall pay a fine in the amount of \$1,500.00 and shall be suspended for a period of five days, all but one of those days stayed for one year, provided that the Respondent does not commit any ABC violations. The one day served shall be January 15, 2010.
2. Charge II: Dismissed.

District of Columbia  
Alcoholic Beverage Control Board

  
Charles Brodsky, Acting Chairperson

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Mital Gandhi, Member  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member

Pursuant to Section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001) and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).